FILED
JUN 17 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY EF DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. Jose Baudilo GASTELUM, Defendant.	)	Magistrate Case No. 08MJ8509 **FINDINGS OF FACT AND ORDER OF DETENTION**

In accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.), a detention hearing was held on June 6, 2008, to determine whether defendant Jose Baudilo GASTELUM should be held in custody pending trial on the grounds that he is a flight risk. Assistant U.S. Attorney John F. Weis appeared on behalf of the United States. Matthew Hagen of Federal Defenders of San Diego, Inc., appeared on behalf of the Defendant.

Based on the evidence proffered by the United States and the Defendant, the pretrial services officer, and the criminal complaint issued against the Defendant on June 6, 2008, by this Court, the Court concludes that the following facts establish a preponderance of the evidence that no condition or combination of conditions will reasonably assure the presence of the defendant at future court proceedings.

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I

FINDINGS OF FACT

A. Nature and Circumstances of the Offense Charged (18 U.S.C. §3142(G)(1)

1. The Defendant is charged in Criminal Complaint No. 08MJ8509 with Illegal Transportation of Aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). Therefore, probable cause exits to believe the Defendant committed the charged offense.

2. The offense charged in Count I, Title 8 U.S.C. § 1324(a)(1)(A)(ii) is punishable by not more than ten years.

B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2)):

1. The weight of the evidence against the Defendant is strong. On June 5, 2008, U. S. Border Patrol Agents (BPA) received information from Security at the Calexico, California, East Port of Entry advising that a white Honda Accord was seen loading up with suspected illegal aliens and traveling on Highway 7 from the Port of Entry. BPA Catalioto saw Defendant driving the Honda and attempted to conduct a vehicle stop by using the emergency lights and siren. Defendant failed to yield. A Controlled Tire Deflation Device (CTDD) was successfully deployed. Defendant failed to yield and made several abrupt and dangerous turns in an attempt to avoid the CTDD. Finally the Honda stopped alongside a canal, Defendant exited and ran, leaving the occupants inside the vehicle. BPA Catalioto was able to apprehend Defendant. Defendant and the six occupants were arrested.

C. History and Characteristics of the Defendant (18 U.S.C. § 3142(G)(3)

1. The Defendant is a United States citizen.

2. The Defendant resides in Westmorland, California.

D. Nature and Seriousness of Danger Posed by Release (18 U.S.C. § 3142(g)(4)

1. Other than that the charged crime is a drug trafficking offense, there is nothing to suggest that release of the Defendant would pose a danger to any person or the community. The Defendant has the following criminal history:

11/17/07 - 21 U.S.C. § 952 (07CR3318-JLS) - Pending sentencing

06/05/08 - 8 U.S.C. § 1324 (08MJ8509) - Case pending

06/06/08 - Failure to Appear on June 6, 2008, for his sentencing (07CR3318-JLS) as he was in custody on new charges 8 U.S.C. § 1324 (08MJ8509) - No Bail Bench Warrant issued

06/09/08 - Violation of Probation (07CR3318-JLS) - Probation Revocation Hearing

II

REASONS FOR DETENTION

A. There is probable cause to believe that the Defendant committed the offense charged in Criminal Complaint No. 08MJ8509 with Bringing in Illegal Aliens Without Presentation, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii).

B. Defendant was admitted to pretrial release on case 07CR3318-JLS for 21 U.S.C. § 952, at the time of his arrest on the instant offense.

C. The Defendant faces a substantial period of time in custody if convicted of the offense charged in the Complaint. He therefore has a strong motive to flee.

D. Therefore, the Court finds that the Defendant will not comply with the terms of his pretrial release and the Court considers Defendant to be a flight risk.

III

ORDER

IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The Defendant shall be afforded reasonable opportunity for private consultation with counsel.

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While in custody, upon order of a court of the United States or upon the request of an attorney for the United States, the person in charge of the correctional facility shall deliver the Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding or any other appearance stipulated to by defense and government counsel.

THIS ORDER IS ENTERED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED: 6-17-08.

PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE

Prepared by:

KAREN P. HEWITT
United States Attorney

John F. Weis
Assistant U. S. Attorney

cc: Robert Rexode
Counsel for Defendant